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# Half an Hour for Health Care

## Meal Breaks, Waivers, Rest Breaks and Regular Rate of Pay

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**Seyfarth Shaw LLP**

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# Speakers

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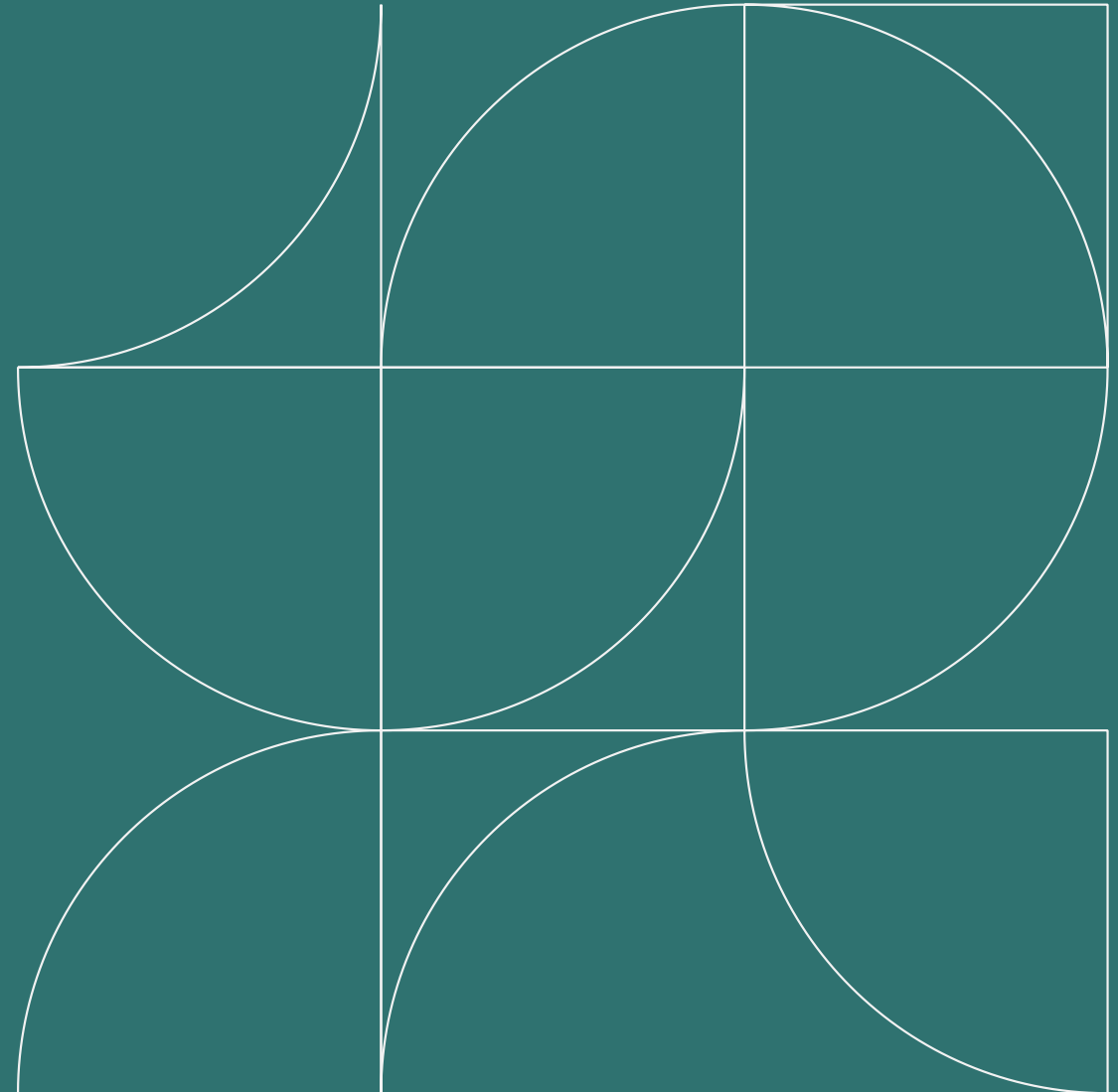
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# Agenda

- 1 | Meal Periods, Waivers, and On-Duty Agreements
- 2 | Rest Periods
- 3 | Regular Rate of Pay

# Meal Periods, Meal Period Waivers & On-Duty Meal Agreements





# Meal Periods – Employer Obligations

Employers must “provide” meal periods to non-exempt employees

– Provide means:

- Relieve employee of duty
- Relinquish control
- Permit a reasonable opportunity to take an uninterrupted 30-minute meal period

Employers need not:

- Police meal breaks and ensure that no work is performed
- Force employees to take their meal periods



# Meal Periods – Employer Obligations

Employers may require employees to:

- Take meal periods at certain times
- Take duty-free meal periods
- Take a break later if they work through a meal period
- Leave work 30 minutes early if they choose to work through a meal period

BUT cannot:

- Pressure employees to perform their duties in ways that omit meal periods
- Exert coercion against taking meal periods
- Create incentives to forego meal periods
- Encourage employees to skip legally protected meal periods



## Meal Periods – Timing

- First meal period must be “provided” no later than the end of the fifth hour of work
- Second meal periods must be “provided” no later than the end of the tenth hour of work
- Schedule meal periods to begin at least 30 minutes before the end of the fifth/tenth hour of work





# Meal Periods – Special Issues

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- Interrupted Meal Periods
- Pagers and Cell Phones
- Meal Period Waivers
- On-Duty Meal Periods



# Meal Period Waivers

- Must be by mutual consent of the employee and employer
- Must carefully keep track of waiver election status
- Different Waivers
  - 6-hour waiver
  - Second meal period waiver
- Special Meal Period Waiver – “One of the Two”
  - Limited to “employees in the healthcare industry”
  - Can waive a second meal period when health care workers work shifts longer than 12 hours



## Meal Period Waivers “One of the Two”

- “The healthcare industry” includes hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating twenty-four (24) hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis
- The following employees at these facilities can utilize the waivers:
  - Employees providing patient care;
  - Employees working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or
  - Employees working primarily or regularly as a member of a patient care delivery team



## Meal Period Waivers “One of the Two”

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- Must be in writing, signed by employee and company’s representative
- Employee or employer may revoke at any time by providing at least one day’s written notice
- Voluntary



## Meal Period Waivers “One of the Two”

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- Do not need to take a meal break within their first five hours of work; instead, employee must take one of their two meal breaks prior to the end of the tenth hour of work
- Ensure the waivers do not have language limiting the waiver to the second meal break or to shifts lasting no more than 12 hours

# The Boards – Question 1

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*Admitting Clerk, Doug Ross, works 10-hour shifts. He generally likes to take his meal period later in his shift and would like to waive his meal period when he works OT.*

*Can the hospital offer Ross a meal period waiver and, if so, what kind?*

# The Boards - Question 2

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*Nurse Jackie really wants to carry her Spectralink phone with her when she is taking a lunch break, just in case there is a patient emergency.*

*Should All Saints' Hospital allow this?*

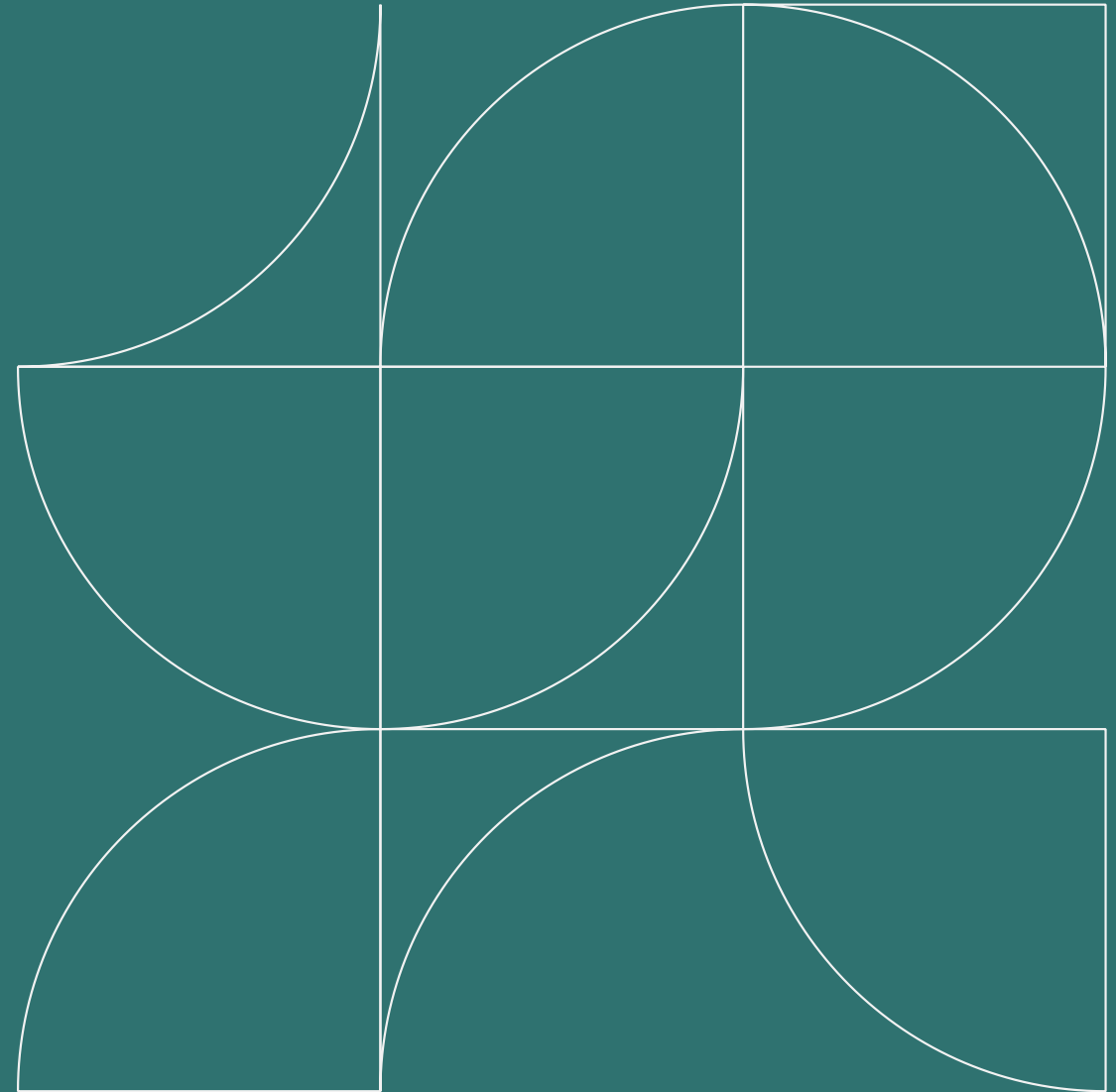


## On-Duty Meal Period – Requirements

- The agreement must be voluntary and signed by the employee
- Must expressly state that it can be revoked at any time
- The nature of the employee's job duties must prevent them from being relieved of duty to take a duty-free meal break
- Employee must have a designated 30-minute period when they are relieved as much as possible and can eat a meal
- Fully paid
- Different from a waiver where no meal period is required at all
- No such provision for rest breaks



# Rest Periods





## Rest Periods – Requirements

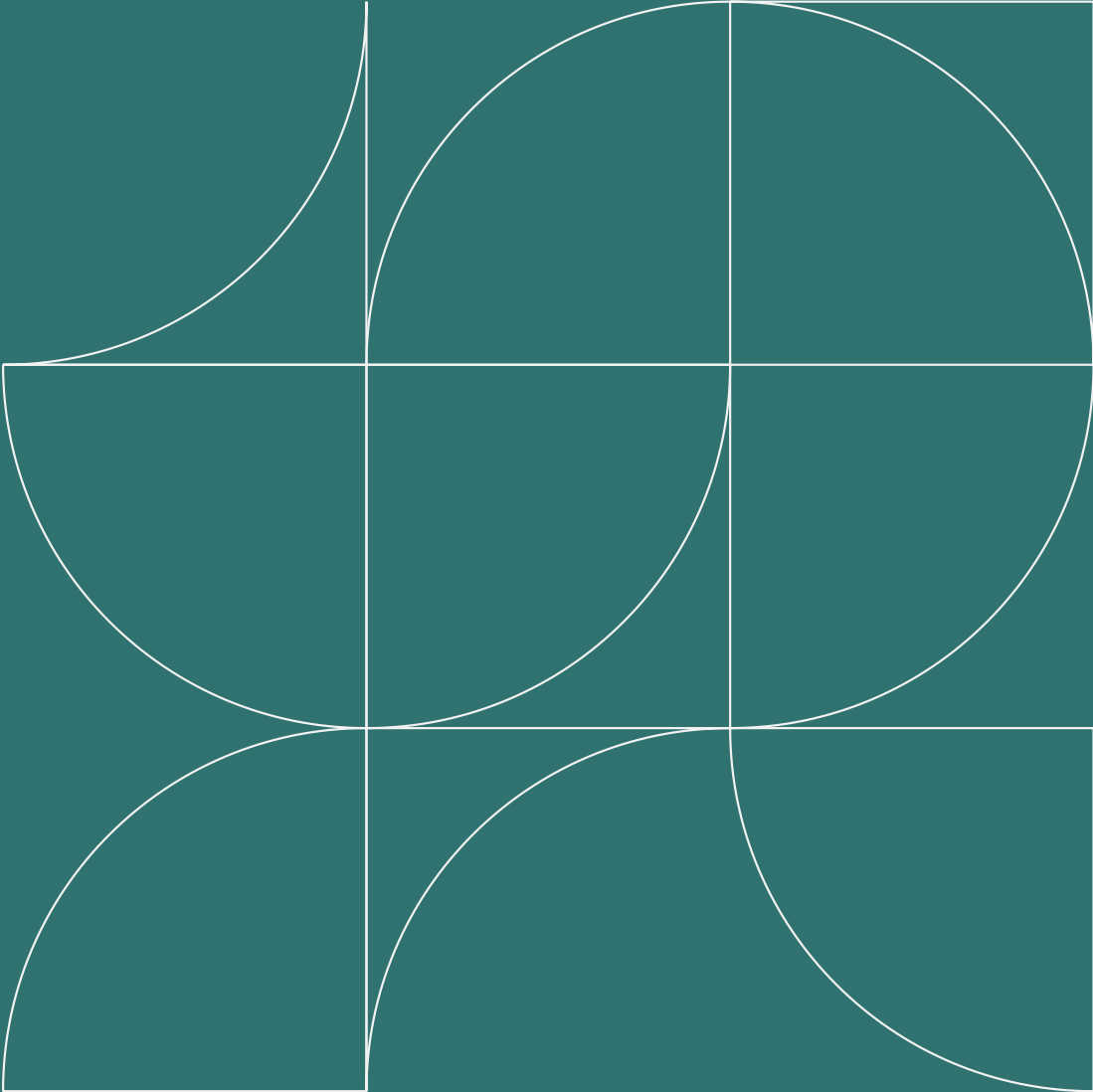
- Employers must “authorize and permit” a paid 10-minute rest break for every four hours worked, or “major fraction” thereof (*i.e.*, anything over two hours),
- Begins when the employee reaches a suitable place to rest (break room, lounge, or other rest area)
  - Practical consideration: 15-minute rest periods
- Rest breaks must be near the middle of each four-hour period if practical
- Cannot be restricted to the premises
- Do not allow the carrying pagers or cell phone
- Interrupted = pay penalty – one hour of pay at regular rate



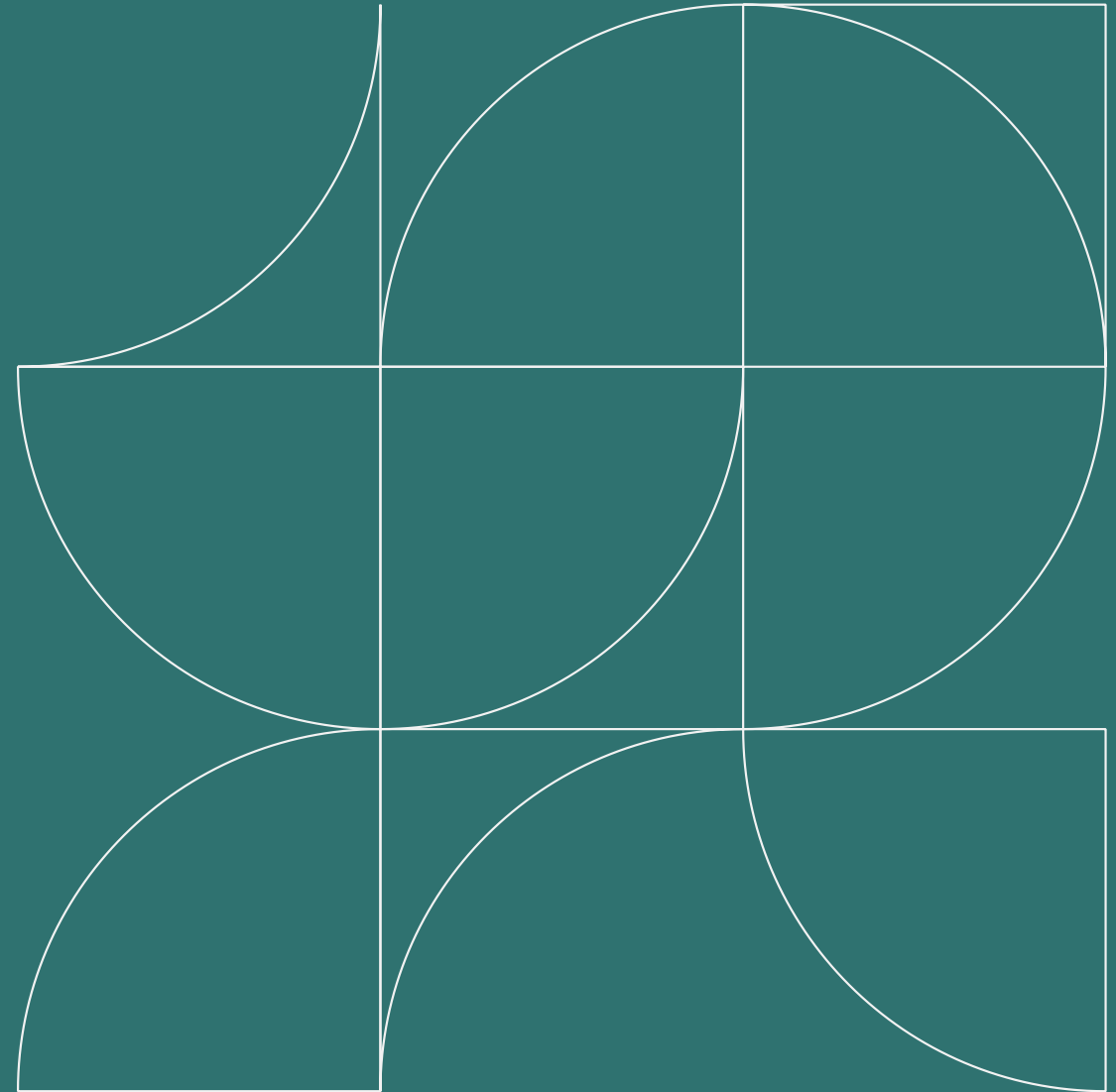
# Attestations – Meal and Rest Periods

- Best Practice for All
- Properly crafted and implemented: Options depend on timekeeping system
  - Sample language: “I hereby certify that the hours recorded accurately identify all time worked, and that, I was provided with all relevant off-duty uninterrupted meal periods and authorized and permitted to take all relevant off-duty uninterrupted rest periods as provided in the [Company] Meal and Rest Period Policy.”
  - Consider additional language re: not being required to miss/take late/short meal/rest period/it was voluntary
- Process: daily if possible
- Ensure employees complete it accurately

**CLE**



# Regular Rate of Pay





# Regular Rate of Pay

- An employee’s regular rate of pay is calculated to include all compensation received during the workweek including:
  - Base hourly wages;
  - commissions; and
  - nondiscretionary bonuses
- The regular rate generally does not include:
  - money paid as a gift or for special occasions (e.g., a holiday bonuses);
  - expense reimbursement;
  - PTO; or
  - Sick pay
- The regular rate of pay can fluctuate week by week

# Regular Rate of Pay – Special Challenges

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All includable compensation divided by all hours worked

## Hours Worked

- Education time
- Controlled v. uncontrolled standby
- Unworked reporting time pay hours

## Compensation

- Meal and rest penalties
- Standby pay
- Shift, unit and other differentials
- Bonuses

**thank  
you**

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